

DOCUMENT RESUME

03646 - [A2713918]

[Protest against Disqualification under Prequalification Procedures]. B-189311. September 23, 1977. 3 pp.

Decision re: International Export Packers, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Corps of
Engineers, Huntsville, AL.

Authority: Foreign Military Sales Act, as amended (22 U.S.C.
2762 (Supp. V)). (P.L. 94-329; 90 Stat. 729). 55 Comp. Gen.
674. B-184911 (1976). B-185174 (1976). B-187765 (1977).
B-177450 (1977).

A company protested disqualification of its proposal under prequalification procedures for a logistics management contract supporting Corps of Engineers operations in Saudi Arabia. The company maintained that, since U.S. Government personnel are used in preparation of solicitations, appropriated funds are being expended. Although administrative costs may be initially paid from appropriated funds, the procurement is essentially to be paid from nonappropriated funds. GAO does not consider protests concerning the use of nonappropriated funds.
(SW)

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DECISION



Mr. Lerner
Pk I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-189311

DATE: September 23, 1977

MATTER OF: International Export Packers, Inc.

DIGEST:

Since United States procurement of logistics management services on behalf of foreign nation pursuant to section 22 of Foreign Military Sales Act will not involve expenditure of appropriated funds, GAO declines to consider protest against the procurement. Fact that administrative costs are initially paid from appropriated funds does not change essential nature of transaction which is one made from nonappropriated funds.

International Export Packers, Inc. (International), has protested its disqualification under prequalification procedures used by the Department of the Army, Huntsville Division, Corps of Engineers, Huntsville, Alabama (Corps), in connection with request for proposals DACA87-77-R-0001.

By a report received in this Office on August 9, 1977, the Corps informed us that the protest involves a logistics management contract in support of Corps operations in Saudi Arabia pursuant to section 22 of the Foreign Military Sales Act, as amended, 22 U.S.C. § 2762 (Supp. V, 1975). The Corps states that, since such procurements do not involve appropriated funds, this Office should dismiss the instant protest under the rationale in Tele-Dynamics, Division of AMBAC Industries, 55 Comp. Gen. 674 (1976), 76-1 CPD 60, and subsequent decisions. In those decisions we held that, since our bid protest jurisdiction is based on our settlement authority over appropriated funds, we would decline to consider protests against procurements made under section 22 of the Foreign Military Sales Act inasmuch as such procurements involved the use of nonappropriated funds.

International, however, maintains by a letter of August 25, 1977, that, since United States Government personnel are used in the preparation of solicitations of this nature, appropriated funds are being expended. International points out that by enactment of Public Law No. 94-329, 90 Stat. 729 (June 30, 1976), Congress amended section 21 of the Foreign Military Sales Act to provide that letters of offer for the sale of defense articles or services issued pursuant to section 21 or 22 of the Act should include charges for administrative costs incurred in procurements made under the Act. International asserts that "settlement of these costs or accounts requires reimbursement to the United States Government" and as such are subject to our settlement authority.

B-189311

We held in Keco Industries, Inc., B-184911, B-185174, June 1, 1976, 76-1 CPD 352, that it would not be appropriate for this Office to take exception to a contract award involving payments from nonappropriated funds merely because appropriated funds may be used by the procuring agency in connection with processing and administering the contract. As pointed out by International, Public Law No. 94-329 requires that the foreign countries accepting offers made under the Foreign Military Sales Act now reimburse the United States for administrative costs in addition to the cost of the items or services procured. The instant procurement is essentially to be paid from nonappropriated funds. The fact that administrative costs may be initially paid from appropriated funds does not change the nature of the transaction. See Aerosonic Corporation, B-187765, June 13, 1977, 77-1 CPD 424; Consolidated Diesel Electric Company, B-177450, January 6, 1977, 77-1 CPD 7.

In view of the above, we decline to consider the protest.


Paul G. Dembling
General Counsel